to have seen an advertisement, that will be sufficient; and evidence that he took in a certain paper is some evidence that he knew of a dissolution advertised therein....."

In our case the Plaintiff and his witness Chow Guan Cheng stated that actual notice was given verbally to Lim Bock Kee the then manager of the Ho Hong Bank. Bock Kee however completely denied ever having had the conversation referred to by the Plaintiff.

The Defendants also put in evidence a written statement given by the Plaintiff to a clerk of the Bankruptcy Office. It was taken on the special instructions of the Official Assignee who wished to see whether he had good grounds for opposing an application for annulment which the Plaintiff had made. This statement appears to be perfectly in order. In it the Plaintiff said he had not notified the bank. I prefer to rely on this documentary evidence and I hold that in fact Plaintiff never actually notified the bank as he alleged.

By paragraph 17 (2) of the Partnership Act, 1880, it is enacted that:—

"A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement."

*Lindley* at p. 293 says:—

"When once it can be shown that liability has attached to any partner, the onus of proving that such liability has ceased is upon that partner or those representing him."

In my opinion the Plaintiff has not discharged this onus. The notices in the Chinese newspapers, even though they appeared 18 times, were not sufficient. Actual verbal or written notice of his retirement should have been given by the Plaintiff.

Therefore as regards the issue I hold that Plaintiff was a partner in the Siew Inn Steamship Company and that he did not give notice to the Defendants that he had ceased to be a partner.

On the question of costs I am prepared to hear counsel.

*Judgment for Defendants.*

Solicitors for the Plaintiff in the Issue—
*C. R. Stuart.*

Solicitors for the Defendants—
*Sisson & Delay.*

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[ORIGINAL CIVIL JURISDICTION]
HYNDMAN-JONES, C.J.
February 17, 1913.

## IN THE MATTER OF THE ESTATE OF CHOO ENG CHOON (DECEASED).

**TAN SIOK YANG & ORS.....Plaintiffs**

**vs.**

**CHOO ANG CHEE.....Defendant**

[SINGAPORE SUIT No. 235 of 1912]

*Practice—Service out of the jurisdiction—Notice of Writ—Less than judicial limit of time for entering appearance allowed — Irregular service—Non-production of original notice—Civil Procedure Code, 1907, ss. 90, 1339, 1340.*

An Order was made for service out of the jurisdiction of a Notice of a Writ of Summons limiting the time within which the Defendant was to enter an appearance to "one month after personal service." The Notice which was issued on the 8th July, 1912, required the Defendant "within one month after the date of this Notice" to enter an appearance. A copy of the said Notice was delivered to the Defendant on the 2nd August, 1912, but there was no evidence that the Original Notice had been produced to him. On the 30th December, 1912, the Defendant took out a Summons to set aside the said Notice and service thereof:—

*Held* (1) that, inasmuch as the period of one month provided by the Order for service as the period within which to enter an appearance, had not been allowed to the Defendant, he was under no obligation to apply to the Court to set aside the Notice or service thereof and that the said Notice and service were invalid and not merely irregular and must therefore be set aside (2) that the non-production of the original Notice to the Defendant also invalidated the service thereof.

Adjourned Summons.

The Plaintiffs on the 28th June, 1912, obtained an Order for leave to issue a Writ of Summons for service out of the jurisdiction and for service of Notice thereof upon the Defendant at Saigon. The said Order also directed "that the time limited for the said Defendant to appear to the said Notice in lieu of Writ be one month after personal service on the said Defendant." On the 2nd July, 1912, a Writ for service out of the jurisdiction containing the time limited by the said Order was issued on the 8th July, 1912. Notice of the said Writ was issued containing the following words:—

"And you are required within one month after the date of this notice to defend the said suit by causing an appearance to be entered for you, in the said Court to the said suit. And in default of your so doing, (the plaintiffs) may proceed therein and judgment may be given in your absence." On the 10th December, 1912, an affidavit by Tan Hood Guan was filed which stated that he had on the 2nd August, 1912, served the Defendant with the Notice of the Writ by delivering the same to the latter personally at Saigon. The affidavit made no

mention of the production of the original Notice to the Defendant or of the indorsement of the date of service thereon nor was the original notice, (but only a copy thereof) exhibited to the affidavit.

On the 16th December, 1912, the Plaintiffs filed a motion paper applying *exparte* for the appointment of a Receiver and thereafter took out a summons also applying *exparte* for leave to proceed in default of appearance.

On the 30th December, 1912, the Defendant took out a summons applying to set aside the said Notice and service thereof and at the same time entered a conditional appearance. The Defendant's Summons was thereafter adjourned into Court for argument.

*Koek (Sr.)* for Defendant:—(i) It is essential that the time for appearance fixed by the order for service should be contained in the Notice of the Writ, *Reynolds* v. *Coleman*, 36 Ch.D. 453, 458. The omission to state such time renders the Notice and service thereof void, *Galli* v. *Mengruel*, L.R. 1 C.P. 46. A judicial sanction is analogous to a statutory one, and in the latter case a non-compliance with such sanction is considered as a nullity. *Dyson* v. *Attorney-General*, (1912) 1 Ch. 158. (ii) The provisions of section 90 of the Civil Procedure Code, 1907, as to the production of the original Notice of the Writ have not been complied with. Such non-compliance is not a mere irregularity and renders the service a nullity, *Phillipson* v. *Emmanuel*, 56 L.T. 858 following *Hawthorn* v. *Harris*, 23 W.R. 214.

*Page* for Plaintiffs:—The Court should deal with the irregularities under section 1033 of the Civil Procedure Code and as the Defendant has not applied to set aside the same within reasonable time, his Summons should be dismissed under section 1940 of the said Code. The Court can infer from the affidavit of Tan Hood Guan that the original Notice was produced to the Defendant. (Hyndman-Jones, C.J., called attention to the omission to endorse the date of service). In England, this defect would not be a mere irregularity but a nullity (*Hamp-Adams* v. *Hall*, (1911) 2 K.B. 924), but in this Colony, it is curable under section 102 of the Civil Procedure Code.

*Koek* in reply.

*Cur. Ad. Vult.*

**HYNDMAN-JONES, C.J.**—In this case there were obvious irregularities in the notice of the writ and in the service of it and the only question is, whether I can treat these as merely irregularities and therefore curable under section 1339 of the Civil Procedure Code or whether the irregularities are incurable and the notice and service of the notice void.

Two points were relied on in support of the Summons, viz:—(1) That the notice of the writ and the service thereof was bad inasmuch as the order of the Judge directed that an appearance should be entered within one month after the date of the notice, as an alternative. (2) That the service of the notice was not effected in accordance with the provisions of section 90 of the Civil Procedure Code.

I am of opinion that the defendant succeeds on both points. It appeared from the affidavit of Tan Hood Guan that service was effected on the 2nd August, 1912, whereas the date of the notice was the 8th July, 1912, the time therefore, for an entry of appearance given by the Judge was within one month from the 2nd August, the time given by the notice was within one month from the 8th July; in other words, the notice required an appearance to be entered within six days of the service, whereas the Judge had directed that an appearance should be entered within one month of such service. It was said that *Galli* v. *Mengruel*, (1865) L.R. 1 C.P. 46, was an old case and decided before the Judicature Acts and the Orders and Rules thereunder, and no doubt that is so; but the case is cited as an authority in the latest edition of the Annual Practice and Byles, J., gave as a ground for refusing to allow the Plaintiff to proceed that "the Defendant was led by the endorsement to believe that he was too late to pay the sum claimed," and the whole Court held that the irregularity could not be waived by a subsequent admission of service and an offer to settle. So, in our case, we may say that "the Defendant by the terms of the notice was led to believe that he was too late to enter an appearance," and moreover in our case there has been no subsequent admission of service and an offer to settle. Piggott, also, in his work on "Service out of the Jurisdiction" treats the case as of existing authority; and if we may draw an analogy between the case of a statutory sanction and the case of a Judicial sanction, which, I think, we may, the authorities are clear that, not to follow the sanction strictly is not a mere irregularity but a nullity, and it follows that just as in the case of the Finance Act, 1910, viz: *Dyson* v. *The Attorney-General*, (1912) 1 Ch. 158, 169, "There was no obligation to make a return at all because the date specified was not the date sanctioned by the Act," so here, there was no obligation to enter an appearance or apply for an extension of time to do so, because the date specified in the notice was not the date sanctioned by the Judge. Such being my view on the first point, it becomes unnecessary to consider the second, but I may say that the affidavit of Tan Hood Guan does not disclose such a service as is required by ss. 90 and 108 of the Civil Procedure Code, while the indorsement required by section 98 was admittedly

not made on the document, because the original, it was said, had been lost in Saigon.

With regard to this latter defect, if the original were in existence, no doubt, the time for endorsing it might be extended (*Hastings* v. *Hurley*, W.N. 1881 page 39) but, with regard to the former defect, Piggott, citing *Hawthorn* v. *Harris*, 23 W.R. 214, and *Phillipson* v. *Emmanuel*, 56 L.T. 858, also cited at the Bar, says that all subsequent proceedings founded on the writ would be void and not merely irregular.

I am indebted to Mr. Page for directing my attention to the case of *Hamp-Adams* v. *Hall*, L.R. (1911) 2 K.B.D. 942, and I appreciate his frankness in doing so. The case is, of course, later than *Hastings* v. *Hurley*, and judgment in default had been signed. The Lords Justices there held that when proceedings are going to be taken against a defendant in his absence, it is most important that there should be at every stage a strict compliance with the Rules, and that non-compliance is not a mere irregularity which can be waived, but a matter which prevents any further proceedings from being taken on the writ. The case is rather confirmatory of the conclusion at which I have arrived but I should have arrived at the same conclusion without its assistance.

For the above reasons I am of opinion that the summons succeeds and that there should be an order in terms.

*Notice of writ and service set aside with costs to Defendant in any event.*

Solicitors for Plaintiffs—*Allen & Gledhill.*

Solicitor for Defendant—*E. R. Koek (Sr.)*

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[ORIGINAL CIVIL JURISDICTION]
BARRETT-LENNARD, J.
April 16, 1923.
[APPELLATE CIVIL JURISDICTION]
SHAW, C.J., BROWN & REAY, JJ.
August 17, 1923.

**ATTORNEY GENERAL FOR THE STRAITS SETTLEMENTS.....Appellant**

vs.

**PANG AH YEW.....Respondent**

[MALACCA CROWN SUIT No. 1 of 1923]
[ORIGINATING MOTION No. 2 of 1923]
[SINGAPORE APPEAL No. 15 of 1923]

*Sale of land for arrears of land revenue—Non-compliance with Ordinance—Liability of Crown for torts of its servants—Petition of right—Ordinance No. 22 (Crown Suits) S. 20—Ordinance No. 35 (Land Revenue Collection) S. 4—Ordinance No. 132 (Public Authorities Protection).*

Under Ordinance No. 22 (Crown Suits) a petition of right can be maintained to recover damages arising from a Collector of Land Revenue selling land under Ordinance No. 35 (Land Revenue Collection) for arrears of revenue without first serving a written notice of demand as required by S. 4 of Ordinance No. 35 (Land Revenue). The Collector in selling is an agent of the Crown although he acts under statutory authority, and the fact that he has carried out his duties in an unauthorised manner does not prevent the Crown from being liable.

No action lies against any person acting in execution of statutory duties or other public duties, unless the party complaining can allege malice and want of reasonable and probable cause.

Judgment of Barrett-Lennard, J., affirmed by Court of Appeal.

Principles on which the Court of Appeal will allow points of law not taken in the Court of first instance to be raised on appeal discussed by Reay, J.

The case arose on a motion by the Attorney-General (Appellant) for an order that the petition of right presented by the respondent should be dismissed as being bad in substance and in law, and upon other grounds, and disclosed no cause of action.

The motion was heard by Barrett-Lennard, J., who on the 16th April, 1923, ordered that the said motion be dismissed. The appellant appealed to the Court of Appeal at Singapore against the said order and the appeal came on for hearing before Shaw, C.J., Brown and Reay, JJ., who on the 22nd December, 1923, dismissed the said appeal. From the decision of the Court of Appeal the appellant appealed to the Privy Council, whose Judgment is reported in L.R. (1925) A.C. 555, and is therefore omitted from this report.

The circumstances in which the petition of right was presented, and the provisions of the relevant Ordinances, appear from the Judgments reported below.

**BARRETT-LENNARD, J.**—This is a motion by the Attorney-General for the dismissal of a Petition of Right on the ground that it discloses no case, admitting as true the facts alleged in it, which would entitle the suppliant to any decree against His Majesty's Local Government.

The facts set out in the petition, and which for the purposes of this motion must be accepted as correct, admit of a very brief statement. In February, 1920, the suppliant acquired, at the price of $6,000, some rubber-bearing lands situate at Tanjong Minyak in the Settlement of Malacca. At all material times there were on the land quarters for coolies and a store containing various articles commonly used by, or found in the possession of, planters. These articles included a latex jar, mangles, buckets, baskets, plank beds and sheets of rubber. They were of sufficient value to liquidate the claim on the part of the Government now to be mentioned. That claim was for quit-rent in respect of the year 1921, which the suppliant confessedly omitted to pay. But no written notice of demand was served as required by section 4 of Ordinance No. 35 (Land Revenue Collection), and no attachment of the